

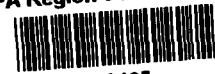
KIRKLAND & ELLIS
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

200 East Randolph Drive
Chicago, Illinois 60601

312 861-2000

Reed S. Oslan
To Call Writer Direct
312 861-2166

EPA Region 5 Records Ctr.



200165

Facsimile:
312 861-2200

June 22, 1993

VIA FACSIMILE

Thomas Nash, Esq.
Assistant Regional Counsel
U.S. EPA - Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Re: Himco Superfund Site

Dear Mr. Nash:

In our telephone conversation last week, you indicated that U.S. EPA is circulating a draft ROD and will be issuing its final ROD at Himco soon. I am writing to raise several important concerns of my client, Miles Inc., and to identify several procedural shortcomings in U.S. EPA's proposed action.

As background, U.S. EPA's own contractor at Himco concluded that no present risk exists at Himco. Only through repeated violations of U.S. EPA's risk assessment guidance, it concluded that a hypothetical future risk exists if people move onto the landfill and drink the leachate for 70 years. Despite this, U.S. EPA proposed an extreme remedy which some say may cost as much as \$20 million.

Several PRPs, including Miles, submitted detailed comments demonstrating that no present or future risk exists at Himco and, thus, no remedy is warranted under CERCLA. Indeed, the weakness in the risk assessment was acknowledged by Rhett Nelson, when he told me "U.S. EPA is going around and around on the risk assessment."

You refused to tell me anything about the remedy adopted by U.S. EPA. Yet, if U.S. EPA is issuing the ROD it can only mean it has decided to proceed with the proposed remedy or something quite similar to it. Otherwise, an additional comment period would be required under the NCP.

U.S. EPA will be violating CERCLA by issuing the Himco ROD. First, Miles and several other PRPs have petitioned U.S. EPA to delist the Himco Site from the National Priorities List. It certainly would violate CERCLA and offend due process to issue a ROD where a delisting petition is pending. Second, U.S. EPA

KIRKLAND & ELLIS

Thomas Nash, Esq.
June 22, 1993
Page 2

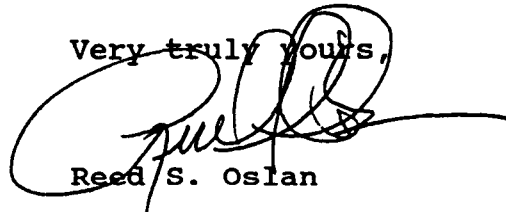
simply has no authority to act under CERCLA at Himco. No threat exits! U.S. EPA and its risk assessment contractor have repeatedly admitted this fact. And finally, issuance of a ROD would mean U.S. EPA ignored completely its own NCP and risk assessment guidance. Under these circumstances, the issuance of the ROD at Himco would be arbitrary, capricious and contrary to law.

As you well know, Miles has requested, on at least 10 occasions, that U.S. EPA agree to meet to discuss the technical issues at Himco, particularly regarding the risk assessment. U.S. EPA refused every request and has provided no valid basis for refusing to meet.

Accordingly, on behalf of Miles Inc. I am requesting U.S. EPA to defer issuance of the ROD at the Himco Site, to fully evaluate and grant the pending delisting petition, and at a minimum to agree to meet with Miles' technical experts. We are available at your convenience.

Please call me if you would like to discuss the issues raised in this letter.

Very truly yours,



Reed S. Oslan

RSO:lms

cc: Mr. Valdas Adamkus
Mr. William Muno
Ms. Jodi Traub
Mr. Richard Karl
Ms. Beverly Kush
Gail Ginsberg, Esq.
Bertram Frey, Esq.
Rhett Nelson, Esq.
Spencer J. Nunley, Esq.
Richard W. Winchell, Esq.
R. Lennie Scott, P.E.